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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1284 OF 2005
IN
SUIT NO.2537 OF 1992

Arvind Ambalal Patel)..Plaintiff

Versus

Sumant J. Patel and another)..Defendants

Mr.A.M. Vernekar with Mr.N.M. Dagli i/b.M/s.N.M.Dagli & Co. for the Plaintiff.

Ms.Meena Madhusudan i/b.Eastley Lam & Co. for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 27TH JUNE 2006

P.C.:

. The present Motion has been taken out by the Plaintiff for discharge of the Court Receiver without passing accounts and for withdrawal of the royalty amount which has been deposited with the Court Receiver.

2. The Plaintiff claims to be the owner of a Mercedes Benz 240D car bearing registration No.MMH 9289. By an ad-interim order passed on 15th February 1996, the Court Receiver was appointed in respect of the car. Defendant No.1 was permitted to be appointed as agent of the Court Receiver. It appears that the car has been returned by the Defendants and, therefore, the Plaintiff is now seeking that the Court Receiver be discharged.

3. Admittedly, the car is in possession of the Plaintiff. Hence, Motion can be made absolute in terms of prayer clause (a).

4. As regards the prayer for withdrawal of the royalty amount, in my view, this cannot be granted since by the order dated 27th December 2004 passed in Appeal (Lodging) No.851 of 2004, the Plaintiff was given the liberty to take possession of the car and to carry out the necessary repairs and further to claim the amount ultimately in the Suit. In my opinion, therefore, the claim for withdrawal of the royalty amount can be decided only when the Suit is finally heard and disposed off.

5. On the application made by Mr.Vernekar, the amount of royalty which is deposited with the Court Receiver, shall be transferred and deposited with the Prothonotary & Senior Master. The Plaintiff may withdraw the amount on giving a Bank Guarantee of a Nationalised Bank to the satisfaction of the Prothonotary & Senior Master which shall be kept alive during the pendency of the Suit. In the event it is found that the Plaintiff is required to return the amount, the Plaintiff will bring back the amount together with interest awarded.

6. Notice of Motion made absolute in terms of

prayer clause (a).